

CIVIL COVER SHEET

BZ

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

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| I. (a) PLAINTIFFS JACOB MEDWAY | DEFENDANTS APPLE, INC. |
| (b) County of Residence of First Listed Plaintiff LOS ANGELES (EXCEPT IN U.S. PLAINTIFF CASES) | County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. |
| (c) Attorney's (Firm Name, Address, and Telephone Number) Lionel Z. Glancy Glancy Binkow & Goldberg LLP 1801 Avenue of the Stars, Suite 311 Los Angeles, CA 90067 (310) 201-9150 | Attorneys (If Known) |

| II. BASIS OF JURISDICTION (Place an "X" in One Box Only) | III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) | | | | | | | | | | | | | | | | | | | | | | | | |
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| <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | <table border="1"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
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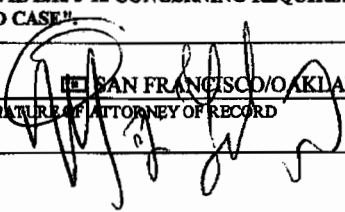
| IV. NATURE OF SUIT (Place an "X" in One Box Only) | | | |
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| CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | TORTS <table border="1"> <tr> <td> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table> CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability |
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| FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
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| V. ORIGIN (Place an "X" in One Box Only) | Transferred from | Appeal to District |
| <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment | | |

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| VI. CAUSE OF ACTION | Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332 |
| | Brief description of cause: |

| | | | |
|-------------------------------------|---|------------------|---|
| VII. REQUESTED IN COMPLAINT: | <input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 | DEMAND \$ | CHECK YES only if demanded in complaint: |
| VIII. RELATED CASE(S) IF ANY | PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE" | | JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

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| IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY) | <input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND | <input type="checkbox"/> SAN JOSE |
| DATE 01/26/09 | SIGNATURE OF ATTORNEY OF RECORD  | |

FILED BY FAX
PURSUANT TO LOCAL RULES

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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 *Attorneys for Plaintiff*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JACOB MEDWAY, Individually and on
13 Behalf of All Other Persons Similarly
14 Situated,

15 Plaintiff,

16 v.

17 APPLE, INC., a California Corporation

18 Defendants.

CV 09 - 0330
CASE NO.

CLASS ACTION

BZ
CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF

JURY TRIAL DEMANDED

FILED BY FAX
PURSUANT TO LOCAL RULES

1 Plaintiff, by his attorneys, alleges upon personal knowledge as to his own acts,
2 and as to all other matters upon information and belief based upon, *inter alia*, the
3 investigation made by and through his attorneys.

4 **INTRODUCTION**

5 1. This is a class action brought by Jacob Medway ("Plaintiff") against
6 Apple, Inc. ("Apple") on behalf of a class of all consumers who purchased Apple's
7 iPhone 3G manufactured and marketed by Apple (the "Class").

8 2. As detailed herein, Plaintiff brings this action for damages, restitution and
9 other injunctive relief for misrepresentations made by Apple in the marketing,
10 advertising and sale of the iPhone 3G.

11 **JURISDICTION AND VENUE**

12 3. This action is brought as a class action pursuant to Rule 23 of the Federal
13 Rules of Civil Procedure.

14 4. There are more than 100 class members, and the damages suffered and
15 sought to be recovered herein total, in the aggregate, in excess of \$5,000,000.

16 5. Apple is registered with the California Secretary of State as a corporation
17 doing business in California, and maintains a registered agent in Cupertino, California.
18 As such, Apple has submitted itself to process and jurisdiction of courts sitting in
19 California, including the United States District Court, Northern District of California.

20 6. This Court has jurisdiction over this action pursuant to the Class Action
21 Fairness Act, 28 U.S.C. § 1332 (2005).

22 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because (a)
23 Defendant maintained offices, has agents, transacts business, and is found within this
24 judicial District; (b) Defendant's unlawful conduct occurred in this District; and (c)
25 Defendant regularly and continuously conducted business in interstate commerce in or
26 affecting this District.

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1 Plaintiff. Class members may be notified of the pendency of this action by published
2 and/or mailed notice.

3 13. There is a well-defined community of interest in the questions of law and
4 fact affecting the parties represented in this action.

5 14. Common questions of law and fact exist as to all members of the Class.
6 These common questions predominate over the questions affecting only individual Class
7 members.

8 15. The questions common to members of the Class are, *inter alia*:

9 a. Whether the iPhone 3G's connectivity to the 3G network fails at
10 unacceptably high rates, is inherently defective and is not of merchantable quality;

11 b. Whether defendant made false and/or misleading statements of fact
12 to the Class and the public concerning defects inherent in the iPhone 3G;

13 c. Whether defendant concealed from Plaintiff, the Class and
14 consumers that the iPhone 3G's connectivity to the 3G network is subject to
15 unacceptably high failure rates, is inherently defective and is not of merchantable
16 quality;

17 d. Whether the iPhone 3G fails to conform to defendant's product
18 specifications, which were published, disseminated and advertised to Plaintiff and the
19 Class;

20 e. Whether defendant concealed from Plaintiff and the Class that the
21 iPhone 3G did not conform to its stated product specifications;

22 f. Whether defendant's false and/or misleading statements of fact and
23 concealment of material facts concerning the performance and reliability of the iPhone
24 3G ability to connect to the 3G network were likely to deceive the public;

25 g. Whether, by the misconduct set forth in this Complaint, defendant
26 has engaged in unfair, fraudulent or unlawful business practices with respect to the
27 advertising, marketing and sales of the iPhone 3G;

28

1 h. Whether defendant violated California's Unfair Business
2 Practices Act;

3 i. Whether defendant violated the Consumer Legal Remedies Act; and

4 j. Whether, as a result of defendant's misconduct as alleged herein,
5 Plaintiff and the Class are entitled to damages and injunctive relief and other remedies
6 to which Class members are entitled as a result of defendant's wrongful conduct, and,
7 if so, the amount and nature of such relief.

8 16. Plaintiff's claims are typical of the claims of the members of the Class as
9 all members of the Class are similarly affected by defendant's wrongful conduct.
10 Plaintiff has no interests antagonistic to the interests of the other members of the Class.
11 Plaintiff and all members of the Class have sustained economic injury arising out of the
12 defendants' violations of common and statutory law as alleged herein.

13 17. Plaintiff is an adequate representative of the Class because (a) his interests
14 do not conflict with the interests of the members of the Class he seeks to represent; (b)
15 he has retained counsel competent and experienced in complex class action litigation;
16 and (c) he intends to prosecute this action vigorously. The interests of members of the
17 Class will be fairly and adequately protected by Plaintiff and his counsel.

18 18. A class action is superior to all other available methods for the fair and
19 efficient adjudication of this controversy since joinder of all members is impracticable.
20 Furthermore, as the damages suffered by individual Class members may be relatively
21 small, the expense and burden of individual litigation make it impossible for members
22 of the Class to individually redress the wrongs done to them. There will be no difficulty
23 in the management of this class action. Individualized litigation presents the potential
24 for inconsistent or contradictory judgments. A class action presents far fewer
25 management difficulties and provide the benefits of single adjudication, economy of
26 scale, and comprehensive supervision by a single court.

1 **FACTUAL ALLEGATIONS**

2 19. Apple designs, manufactures, and sells personal computers, portable digital
3 music players, and mobile communication devices, as well as related software, services,
4 peripherals, and networking solutions worldwide. Apple offers its services and products
5 to businesses and consumers.

6 20. One such product marketed by Apple in California is its iPhone 3G, which
7 is a mobile cellular phone which purportedly includes additional features such as a video
8 and audio player and an Internet device which provides access to email and the Internet.

9 21. The "3G" designation refers to the so-called 3G wireless network which
10 purportedly is capable of transferring data at speeds of up to 1.4 Mbps. Although 3G
11 makes data move faster, it also uses more bandwidth than typical digital voice services.

12 22. AT&T is the exclusive wireless 3G network service provider for the iPhone
13 3G.

14 23. At all relevant times, Apple represented to the public, including the Class,
15 that the iPhone 3G was a quick (due to its connectivity to the 3G network), dependable
16 and reliable mobile telephone, that it was free from defects, and that it was of
17 merchantable quality and workmanship.

18 24. Multi-functional cellular phones have become a lucrative market for
19 companies, who are scrambling for market share in this highly competitive field.

20 25. To bolster their competitive position, defendants are engaging in a
21 comprehensive advertising blitz (including radio, television, and print advertising), in
22 an effort to convince consumers that the iPhone 3G's connectivity to the 3G network
23 makes it superior (*i.e.*, faster) than competing phones. For example, Apple's web-site
24 provides the following description for the iPhone 3G:

25 3G technology gives iPhone fast access to the Internet and
26 email over cellular networks around the world. iPhone 3G
27 also makes it possible to do more in more places: Surf the
web, download email, get directions, and watch video — even
while you're on a call.

28 <http://www.apple.com/iphone/features/wireless.html>

1 26. Apple also recently launched its advertising slogan for the iPhone 3G
2 which is "half the price, twice the speed."

3 27. Similarly AT&T's web-site offers the following description of the iPhone
4 3G:

5 iPhone 3G harnesses the power of AT&T's broad and
6 powerful 3G mobile broadband network, which offers 3G
 mobile phones download speeds of up to 1.4 Mbps.

7 <http://www.wireless.att.com/cell-phone-service/specials/iPhone.jsp>

8 28. However, in a rush to quash the efforts of its competitors in the cellular
9 mobile phone industry, defendant failed to disclose that a defect within the iPhone 3G
10 prevents it from maintaining a signal on the 3G network.

11 29. As a result of defendant's misrepresentations, thousands of consumers who
12 purchased Apple's iPhone 3G and accompanying 3G service from AT&T have
13 experienced broken promises regarding the phone's transmission speed. Defendant's
14 missteps have affected thousands of customers in California, many of whom experience
15 3G connectivity only a fraction of the time, if at all, that they are connected to the AT&T
16 3G network.

17 30. Despite knowledge that the iPhone 3G cannot maintain consistent 3G
18 service, defendant continues to solicit new orders in a multimillion-dollar television and
19 print advertising campaign for the iPhone 3G.

20 31. Notwithstanding its marketing and advertisement campaign's theme and
21 the express and implicit representations that defendant would provide customers with
22 fast 3G connectivity with their iPhone 3G, defendant has been unable to fulfill that
23 obligation to consumers.

24 32. On August 11, 2008, C-Net News published an article concerning the
25 iPhone 3G problems plaguing Apple and AT&T. The article entitled, "*Apple, AT&T*
26 *mum on iPhone 3G issues*" stated in part:

27 Widespread complaints about the iPhone 3G's reception have
28 spread across the Internet in the month since Apple and
 AT&T released the successor to the original iPhone. The

1 companies insist that nothing is wrong, but the complaints
2 have been mounting through e-mails, water-cooler
3 discussions, and message boards on Apple's own Web site:
iPhone 3G users are having trouble connecting, and staying
connected, to the 3G networks in their areas.

4 Users say the iPhone 3G will switch between 3G networks
5 and EDGE networks even when the device is sitting still.
6 They'll lose reception in the middle of a call while traveling
7 through a 3G-rich environment. Friends with other 3G
8 phones on AT&T's network are not reporting similar
problems. And the issues don't appear to be confined to
AT&T's network: iPhone 3G users in other countries report
similar problems with their new phones.

9 As you can imagine, this doesn't sit well with many who
10 eagerly bought the iPhone 3G to take advantage of 3G
11 networks, which Apple promises are "twice as fast" as the
EDGE networks in its advertising material. "Frankly, if I
12 knew it was going to be like this, I wouldn't have paid the
extra \$10 a month," said iPhone 3G owner David Howard of
Provo, Utah.

13 Repeated attempts over the past week to get Apple and AT&T
14 to even acknowledge the uproar--if not the issues
15 specifically--proved pointless. Apple didn't even attempt to
answer the questions, deferring inquiries to AT&T, which
declared that there were absolutely no widespread problems
with the iPhone 3G on its network.

16 "What we're seeing is that the iPhone 3G is performing very
17 well," said Mark Siegel, a spokesman for AT&T. "I'm not
denying that people are having problems. But we have to
deal with these on a case-by-case basis."

18 It's always difficult to determine the scope of an issue posted
19 on Internet message boards--whether or not a loud minority
20 is blowing up a relatively minor problem into something
more. But this time, lots of different people are crowding the
Internet to vent their frustrations and search for answers to the
21 reception issues, and they are finding a lot of sympathizers.

22 33. On August 12, 2008, Richard Windsor, an research analyst with Nomura
23 Securities International, Inc. issued a report stating that the iPhone 3G's inability to
24 reliably connect to the 3G network relates to a specific design defect within the phone.

25 34. However, when Apple replaced phones in response to customer complaints
26 regarding the iPhone 3G's inability to connect to the 3G network, Apple simply
27 replicated the problems by providing consumers with replacement phones and thus
28 subject to the same issues which prompted the replacements.

35. Additionally, defendant concealed material facts concerning the iPhone 3G, including that the phone is unable to maintain a signal on the 3G network, is not of merchantable quality, and does not conform to stated specifications.

36. During the relevant period, defendant knew or should have known that the iPhone 3G was failing at unacceptably high rates. Nevertheless, defendant has not warned consumers of the problems or taken steps to prevent consumers from experiencing system failures and data losses, and has failed to warn or effectively remedy the iPhone 3G's inherent defects. Instead, and despite its knowledge of these malfunctions, defendant has and continues to remain silent about these problems, even as a significant percentage of iPhone 3Gs fail to perform adequately. To date, defendant has failed to warn customers about the risks inherent in purchasing and relying on the iPhone 3G as a mobile phone capable of maintaining a signal on the 3G network.

37. As a result of defendant's false or misleading statements and concealment of material facts, Plaintiff and the Class bought thousands of iPhone 3Gs and were unable to use these devices as advertised. The iPhone 3G's failures continue to occur.

38. Because of defendant's failure in living up to their marketing campaigns, Plaintiff and the Class have been denied 3G access, and have missed opportunities to purchase other cellular mobile phones with competing phone manufacturers. As a result of the Plaintiff and Class members contractual commitment to AT&T, they have been precluded from seeking alternative network services. As a result of defendant's egregious conduct, Plaintiff and the Class have been economically injured.

COUNT I

[Unfair Business Practices Act]

Cal. Bus. & Prof. Code section 17200

39. Plaintiff, on behalf of himself and on behalf of all others similarly situated, realleges each and every allegation above as if fully set forth herein, and further alleges as follows.

1 40. The Unfair Business Practices Act defines unfair business competition to
2 include any "unfair," "unlawful," or "fraudulent" business at or practice. Cal. Bus. &
3 Prof. Code §17200. Unfair competition also includes "unfair, deceptive, untrue or
4 misleading advertising." The Act also provides for injunctive relief and restitution for
5 violations.

6 41. Throughout the Class Period, defendant committed acts of unfair
7 competition, as defined by Business & Professions Code §17200, by falsely and
8 inaccurately representing, among other things as previously set forth herein, the iPhone
9 3G's ability to access the 3G network.

10 42. Additionally, defendant's practice of advertising the iPhone 3G's superior
11 3G capabilities, when in fact the phone continued to suffer from its inability in
12 providing 3G service constitutes an unfair business practice. Defendant's inability to
13 meet its representations were contrary to its advertisements and therefor violated
14 Business & Professions Code §17200.

15 43. Defendant's conduct is unfair in that the harm to Plaintiff and the Class
16 arising from defendant's conduct outweighs the utility, if any, of those practices.

17 44. Defendant has engaged in conduct that is unlawful in that it is a violation
18 of Business & Professions Code §§17200 and 17500, and the Consumer Legal
19 Remedies Act, in addition to other potential statutory violations.

20 45. As a direct and proximate result of the acts and practices alleged above,
21 pursuant to California Business & Professions Code §17203, Plaintiff and the Class are
22 therefore entitled to: (a) an Order requiring defendant to cease the acts of unfair
23 competition alleged herein; (b) full restitution of all monies paid to defendant as a result
24 of its deceptive practices, including, but not limited to, disgorgement of all profits
25 derived from the sale of the iPhone 3G; (c) interest at the highest rate allowable by law;
26 and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*,
27 *California Code of Civil Procedure* §1021.5.

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COUNT II

[Deceptive Practices]

Consumer Legal Remedies Act, California Civil Code §1750 et seq.

46. Plaintiff realleges and incorporates herein by reference each of the foregoing paragraphs.

47. The policies, acts, and practices described in this Complaint were intended to and did result in the sale of Apple iPhone 3Gs to consumers. By offering its iPhone 3G for sale to the public, defendant represented, directly or by implication, that the iPhone 3G did not have any latent defects that would substantially affect their ability to access the 3G network.

48. Defendant's practices, acts, policies, and course of conduct violated the California Consumer Legal Remedies Act, *California Civil Code* §1750 et seq., (the "CLRA"), in that:

1. Defendant represented that the iPhone 3G had characteristics, uses, benefits, or quantities which it does not have, in violation of *California Civil Code* §1770(a)(5) – specifically, defendant misrepresented the ability of the iPhone 3G to access the 3G network;

2. Defendant represented that the iPhone 3G was of a particular standard or quality, when it is of another in violation of §1770(a)(7) of the CLRA; and

3. The business practices engaged in by defendants that violate the CLRA include, without limitation, failing to disclose or concealing that defendants knew or had reason to know the iPhone 3G was defective.

49. Plaintiff seeks damages and restitution of all monies received by defendant as a result of sales from the iPhone 3G as provided in *California Civil Code* §1780. Plaintiff is informed and believes that the amount of said damages and restitution is unknown at this time, but will seek relief to amend this complaint at the time of trial when the same has been ascertained.

1 50. In compliance with the provisions of Civil Code §1782, Plaintiff has given
2 written notice to the named defendant of his intention to file a complaint for damages
3 under Civil Code §1750, et seq. However, over 30 days have elapsed, and Defendant
4 has failed to offer appropriate consideration or other remedy to all affected consumers
5 as described in the written notice.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests on behalf of himself and other members of the
8 Class, for judgment against defendants as follows:

9 1. An Order certifying the proposed Class herein under *Code of Civil*
10 *Procedure* §382 and *Civil Code* §1781, and certifying Plaintiff as a class representative
11 and his undersigned counsel of record to represent the Class;

12 2. Awarding damages including interest and/or restitution and appropriate
13 equitable relief in favor of Plaintiff and the other class members against Defendant;

14 3. Awarding Plaintiff and the Class their reasonable costs and expenses
15 incurred in this action, including counsel fees and expert fees pursuant to *California*
16 *Civil Code* §1780(e) and *California Code of Civil Procedure* §1021.5; and

17 4. Awarding such other and further relief as this Court may deem just and
18 proper including any extraordinary equitable relief and/or injunctive relief as permitted
19 by law or equity to attach, impound or otherwise restrict defendant's assets to assure
20 Plaintiff and the members of the Class have an effective remedy.

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Dated: January 26, 2009

By:

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